

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-ONE

CASE NO. 21-RC-178527

BUENA PARK HONDA,

Employer,

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, LODGE NO. 1484,

Petitioner.

**BUENA PARK HONDA'S REQUEST FOR REVIEW OF THE REGIONAL
DIRECTOR'S DECISION AND DIRECTION OF ELECTION
CASE NO. 21-RC-178527**

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I. INTRODUCTION

Employer Buena Park Honda (“Buena Park,” “BPH,” or “Employer”) submits this Request for Review of the Regional Director’s Decision and Direction of Election (“Decision” or “DDE”)¹ pursuant to Section 102.67(c) of the National Labor Relations Board’s Rules and Regulations. BPH respectfully requests that the Board grant review and vacate the July 15, 2016 Decision and Direction of Election (“DDE”) issued by the Regional Director for Region 21. This Request should be granted upon the following grounds:

- The Regional Director clearly erred in failing to address Buena Honda Park’s dual function argument without any justification or reasoned analysis.
- The Regional Director clearly erred in the application of *Specialty Healthcare*, an application that resulted in a fractured unit consisting solely of service technicians.
- The Regional Director clearly erred in deciding substantial factual issues related to the composition of the unit and such errors prejudicially affected the rights of Buena Park.
- The Regional Director clearly erred in excluding six employees with the “lube technician” title from the unit, thereby creating an improper residual unit.

II. BACKGROUND AND BASIS FOR REVIEW

On June 17, 2016, the Petitioner filed a representation petition seeking certification as the collective-bargaining representative in the following unit:

Included:

All full-time and part-time technicians employed by the [Buena Park] at the facility currently located at 6411 Beach Boulevard, Buena Park, California.

¹ Attached as Exhibit A.

Excluded:

All hourly lube technicians, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Bd. Ex. 12,³

At a hearing that started on June 28, 2016, the parties disputed the scope of the petitioned-for unit. Tr. 10–17.⁴ Buena Park contends that the only appropriate unit must include all employees in the following classifications working in the “Service Drive” at Buena Park Honda’s facility at 6411 Beach Boulevard, Buena Park, California (the “Buena Park Facility”): service technicians, lube technicians, service sales advisors (“service advisors”), parts counterpersons (“counterpersons”), porters, parts driver, shuttle driver, and shipping & receiving. In the alternative, Buena Park asserts substantial evidence demonstrates that the highly integrated nature of the Service Drive team requires an alternate unit that includes at least lube technicians and service technicians to form an appropriate unit. Tr. 10–17.

Indeed, the Regional Director failed to, at a minimum, add lube technicians to the Petitioner’s petitioned-for unit where they clearly qualify as dual-function employees. The Employer respectfully requests review of the DDE for the reasons stated herein.

III. ISSUES

- A. Whether the Regional Director, who did not even analyze the dual-function issue, correctly excluded lube technicians from the unit where the Regional Director made all the factual findings necessary to indicate they qualify as dual-function employees under Board precedent.

² References to the hearing transcript will be referred to as “Tr.” followed by the appropriate page number(s). References to exhibits introduced into evidence at the hearing are designated by the exhibit number, preceded by “Bd. Ex.” for the Board’s exhibits, “BPH Ex.” for BPH’s exhibits, and “P. Ex.” for Petitioner’s exhibits.

³ Attached as Exhibit B.

⁴ All cites to hearing transcripts are attached as Exhibit C.

- B. Whether the unit directed by the Regional Director is an inappropriate fractured unit composed of employees who do not share a legally sufficient community of interest apart from other Buena Park Service Drive employees.
- C. Whether the Regional Director made clear errors on substantial factual issues that prejudice the Petitioner.
 - 1. Whether the Regional Director correctly excluded six lube technicians from the unit when the Regional Director admitted they have legally sufficient community of interest with, interact with, and are functionally integrated with the work of the other service technicians that form the directed unit.
- D. Whether the Regional Director ignored long-standing precedent which establishes that the service technicians and lube technicians are traditionally included in the same craft unit.

IV. STATEMENT OF FACTS

A. General Background

Buena Park is a full-service automobile dealership in Orange County, California. DDE, Page 2. Buena Park sells, services, and repairs new and pre-owned Honda vehicles. It additionally sells automotive parts to wholesale customers. Tr. 556. The dealership includes the Sales Department and the Service and Parts department. Tr. 570. Included within the latter is the Service Drive, where Buena Park provides maintenance and repair services. Tr. 28.

1. Managerial and supervisory structure

Sean Salehzadeh heads the Buena Park Facility as its General Manager (“GM”). Phan Nou is Buena Park’s Service Director and he reports to the GM. Nou is the ultimate supervisor of all Service Drive employees. Tr. 24–25, 55, 462.

2. The service drive

The Service Drive team includes service advisors, service technicians, lube technicians, counterpersons, porters, parts drivers, shuttle drivers, and shipping & receiving. Tr. 570. Buena Park follows a team concept for all Service Drive members: the porters initially greet the Service

Drive customers and then directs them to a service advisor. Tr. 570. The service advisor works as the main intermediary between the customer, service technicians, and lube technicians. Tr. 470. Shipping & receiving employees contribute to this team effort through regular interaction with Service Drive employees to fulfil orders.

3. Workflow within the service drive

Customers drive the Service Drive process, meaning that Buena Park's Service Drive employees work closely together to identify customer needs and sell Buena Park's products and services to them. Tr. 570. When a customer arrives at the Buena Park Facility, one of BPH's porters directs the customer to a service advisor. The service advisor speaks with the customer about the reason(s) for behind his or her visit. While speaking with the customer, the service advisor prepares a Repair Order ("RO"). *See* BPH Ex. 1-5;⁵ Tr. 58-59. The RO includes an estimate that shows material and labor costs to service the customer's vehicle. BPH Ex. 1-5.

After a service advisor prepares the initial RO, the service technician receives the work. A service technician initially investigates and diagnoses a vehicle's problems. Tr. 137-42. After the initial analysis, service technicians conduct a multi-point inspection, which often leads to suggestions for repairs not yet identified in the RO. Tr. 137-42. After inspecting the car, the service technician communicates with the parts department regarding recommended service. Tr. 38-39; *see also* DDE, Page 4. The parts department checks the availability and price of any part needed to perform the service technician's recommendation. Tr. 557. The parts department then communicates that information to the service advisors. The service advisor shares the information provided by the service technician to the customer. If the service advisor sells the service to the customer, the service advisor updates the RO and informs the service technician of

⁵ Attached as Exhibit D.

the customer's approval. Tr. 137–42. Once the service technicians begin inspecting and doing work on the vehicle, the lube technicians may become involved and combine efforts with the service technicians to fulfill the customer needs. Tr. 128–31, 130–31, 145–46, 149–50, 470. Service technicians and lube technicians work closely with counterpersons when the vehicle repairs involve replacing parts. Tr. 570.

4. Specific job duties of service drive employees

a. Service advisor

The service advisor acts as the dealership's primary point of contact with customers in the Service Department and is Buena Park's representative for the sale of services. Tr. 606. The service advisor is tasked with greeting each customer, communicating with each customer to determine the nature of the mechanical problem(s) and to reiterate the importance of maintaining their vehicles under the manufacturer's specifications; scheduling appointments, and test-driving the vehicle, if needed. Tr. 606.

A service technician and/or lube technician complete the services sold by service advisor with the assistance of counterpersons, porters, and shipping & receiving. Tr. 570. Service advisors work in tandem with service technicians to identify any issues with the vehicle which may be unknown to the customer and report the same to the customer for the latter to accept or decline the additional service. Tr. 36–42, 85–86. Specifically, this occurs when a service technician initially reviews a vehicle and determines whether other services could benefit the vehicle. Tr. 36–42, 85–86. The service technician will communicate those new services to the service advisor who speaks with the customer about the recommended services. Tr. 36–42, 85–86. If the customer accepts the additional service, this results in more work for the service technicians, lube technicians, counterpersons, porters, and shipping & receiving. Tr. 85–86. This cooperative process between the service advisors and other Service Drive employees takes

place throughout the day as they all review and consult with each other to complete services. Tr. 85–86.

b. Service technicians

After conferring with the service advisors regarding customer requests, service technicians inspect each vehicle. In doing so, they identify additional needed services and coordinate with the service advisors, lube technicians, and counterpersons as necessary. Tr. 85–86. Once they set the scope of the work on the vehicle, service technicians perform a variety of tasks. As exemplified by Petitioner’s Exhibit 2,⁶ the work service technicians do includes, among other things, conducting multi-point inspection, performing oil changes, rotating tires, changing air intake filters, conducting fluid exchange, performing 4-wheel alignment, balancing tires, offering battery service, and inspecting brakes. P. Ex. 2.

As discussed in further detail below, the service technicians share every task on this list with lube technicians. Tr. 100. While the service technicians use other tools, they also use tools that the lube technicians use, such as socket sets, ratchet sets, combination wrenches, screw drivers, torque wrenches, pliers, hammers, brake service tools, electrical tools, small tools, pocket flash lights, air blow guns, and air tools. Tr. 146–49.

The service technician compensation system further highlights the interconnected relationship between service technicians and lube technicians. Buena Park guarantees service technicians an hourly rate of \$20.00. Tr. 65–77. If a service technician flags a certain number of hours, they also receive an efficiency bonus. Tr. 72. For example, if a specific task should take one “flag” hour, service technicians “flag” that hour if they complete the task. Tr. 65–72. A service technician’s flag hour rate differs from his hourly rate. Tr. 65–77. If the service

⁶ Attached as Exhibit E.

technician completes the specific task in 15 minutes, he “flags” one-hour. Tr. 65–77. Similarly, if it takes the service technician an hour and 15 minutes to complete the task, he “flags” one hour. Tr. 65–77. Service technicians always receive the guaranteed \$20.00 an hour rate. Tr. 65–77. Their flag hours results in income as an efficiency bonus in excess of their hourly rate. Service technicians receive the difference between the hourly rate and their flag hours. In short, service technicians can earn additional pay by being efficient so they “flag” more hours than their eight hour shift. Tr. 72. One service technician witness even admitted that he used lube technicians to perform his work and that he flagged the work the lube technician performed. Tr. 128–31, 130–31, 145–46, 149–50. This is beyond dispute and admitted on the record:

Q: Did you ever work on a door handle recall?

A: Yes, because I was told by the shop owner.

Q: Okay. Did you bill for work - - did flag for that work?

A: Yes, because I performed the recall.

* * *

A: Removing the oil pan and inspecting the piston.

Q: Did you ever have lube techs help you with this?

A: Yes.

Q: Let me ask you, like on something like this, what needed to get the job done for the - - to complete the job?

A: What needs to get done is removing the oil pan, inspecting the borescope, submitting pictures to Phan for Honda, and putting everything back together.

Q: Would you bill - - so lube techs would help you with that work, right?

A: Yes.

Q: Would you flag for the work that they helped you with?

A: **Yes, because I'm involved.**

Tr. 130–31 (emphasis added). Service technicians also share a uniform with lube technicians. Tr. 154–55.

c. Lube technicians

Like the service technicians, Buena Park's lube technicians perform several tasks related to customer vehicles, including: conduct multi-point inspection, oil changes, rotate tires, change air intake filters, conduct fluid exchange, perform 4-wheel alignment, balance tires, offer battery service, and inspect brakes. Tr. 100, 111–21.

Sometimes a lube technician will perform these tasks on his own and at other times the lube technician will work with the service technician to complete the tasks. Tr. 100–08. As previously mentioned in Section IV.4.b, lube technicians share many tools with service technicians to complete all of these assignments.

d. Counterpersons

Counterpersons interact with the technicians, lube-techs, service advisors, and porters continually throughout the day. Tr. 557. Specifically, the counter-person checks parts availability and price every time that a service technician recommends another service. Tr. 557. Likewise, the counter-person communicates that information to the service advisor before they offer a service to a customer. Tr. 557. Beyond this, the record reflects that the service technicians approach counterpersons every time they need a part. Tr. 557.

e. Porter

The porter greets customers as they arrive. Tr. 456. If a customer arrives for a service appointment, the porter meets the customer and picks up the appointment summary from the counter-person and delivers it to the service advisor while introducing the customer. Tr. 456.

The porter moves vehicles to and from the service lane. Tr. 456. The porter also works with the service technician or the lube technician to drop-off or pick-up customer vehicles. Tr. 456.

f. Parts driver

The parts driver is tasked with transporting parts to and from retail customers. He also delivers parts to service advisors, service technicians, lube technicians, service technicians as needed. Tr. 133.

g. Shuttle driver

The shuttle driver transports customers who take their vehicle to the Service Drive and need to leave BPH premises while the services are being completed. Tr. 455.

h. Shipping & receiving

The shipping & receiving employee delivery of ordered parts. Tr. 558. The shipping & receiving employee then sorts the parts and disperses them to appropriate locations within the facility. Tr. 558.

5. Pay, policies, training, and supervision

a. Hiring/Orientation

Buena Park posts job openings at the Buena Park Facility on its company website. Tr. 24–26, 175–76. As stipulated with Petitioner, all employees in Buena Park’s Service Drive Department undergo the same hiring procedures. Tr. 24–26. Employees in different job classifications all attend the same new hire orientation. Tr. 177, 217–20. They all receive the same documents, and handbook. Tr. 188–89. Similarly, all employees have the same “introductory period,” which is a 60-day period that allows the employee and Buena Park to determine if it is a good fit.

b. Policies

All employees at the Buena Park Facility follow the same terms and conditions of employment and receive the same orientation. Tr. 174–75. In addition, the code of conduct, conflict of interest guidelines, and general work rules apply the same to all employees. Tr. 218. All Service Drive employees receive and follow the same safety training. Tr. 144, 311. The same workweek policy applies to all hourly employees. Most of the petitioned-for and disputed employees work the same shifts, five days per week. Tr. 457–58.

c. Benefits and employee pay

Buena Park Honda offers all the employees at issue the same medical insurance, dental insurance, vision insurance, prescription drug, life insurance, disability insurance, 401(k) plan, credit union, employee assistance program, flexible spending accounts, and receive the same benefits guide. Tr. 187–88.

Service technician pay differs from lube technician. Tr. 191. As noted above, service technicians receive a productivity bonus while Buena Park Honda compensates lube technicians on an hourly basis. Tr. 191. BPH compensates service advisors and counterpersons on a commission basis, which remains inextricably connected to the work that the service technicians perform. Tr. 155.

d. Supervision

As part of the Service Drive, different job classifications report to the same supervisor. Service Director Nou oversees service technicians, lube technicians, and service advisors. Tr. 60–61, 156. Service Director Nou also has responsibility for parts employees.

e. Breakrooms and restrooms

Evidence shows all Service Drive employees share a breakroom. Tr. 49. In terms of restrooms, the service technicians share the restrooms with the lube technicians. Tr. 50–51.

V. ARGUMENT

Upon the Board's stated standards, compelling reasons exist for the Board to grant review on the following issues:

A. Any Unit that Includes Service Technicians Must Also Include Lube Technicians Since They Qualify as Dual-Function Employees

Here, the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and this error prejudicially affects the rights of the Company. *First, the Regional Director failed to analyze and decide the dual-function employee issue that the Company properly raised through its position statement and at hearing.* Second, the Regional Director's complete failure to address the dual-function argument, despite the record clearly establishing that lube technicians spend well over 25–30% of their time performing service technician job duties, represents a clear error regarding a substantial factual issue.

The Board performs a “variant of the community-of-interest test” when analyzing dual-function employees. *Halsted Commc'n*, 347 NLRB 225, 226 (2006). This analysis considers “whether the employee is regularly employed for sufficient periods of time to demonstrate that he, along with the full-time employees, has a substantial interest in the unit's wages, hours, and conditions of employment.” *Berea Publ'g Co.*, 140 NLRB 516, 518–19 (1963). Once a party meets this standard, it is “both unnecessary and inappropriate to evaluate other aspects of the dual-function employee's terms and conditions of employment in a kind of second tier community-of-interest analysis.” *Oxford Chem., Inc.*, 286 NLRB 187, 188 (1987) (emphasis added). Applying this analysis shows that the Region must at least include the lube technicians in any unit that includes the service technicians. This analysis demonstrates how clearly fractured the petitioned-for unit is.

In *In re Medlar Elec., Inc.*, 337 NLRB 796 (2002), the Acting Regional Director excluded a dual-function heavy equipment operator from a petitioned for unit of truck drivers because he only performed truck driving duties twenty-five to thirty percent of the time. The Board overturned the decision, finding that since the heavy equipment operator performed unit work twenty-five to thirty percent of the time, “he regularly performs unit work for a sufficient period of time to demonstrate that he has a substantial interest in the unit’s wages, hours, and conditions of employment.” *Id.* at 797.

Here, similar to *In re Medlar*, it is undisputed that the lube technicians perform beyond 25–30% of service technician work on a daily basis. There is no doubt that lube technicians regularly perform the items that the service technicians flag at the Service Drive. For example, a service technician testified that he performed tire replacements, tire rotations, mount and balance, replace air filters, batteries, wiper blades, and bulbs. Tr. 97:20–23, 100:19–101:7. The DDE specifically said that lube technicians perform oil changes, tire rotations, replace air filters, wiper blades and bulbs. *See* DDE, Page 6. The service technician further admitted that a standard service consists of an oil change and tire rotation and both service technicians and lube technicians do that work. Tr. 101:15–23. Lube technicians further, like service technicians, report to the service advisor if there is additional work that should be done, communicate with counter-person to order any necessary parts, all as part of the Service Drive team. Tr. 570. It is simply beyond dispute that lube technicians regularly perform service technician work and that they spend far more than 25–30% of their time doing the work.

Bredero Shaw further supports this argument. 345 NLRB 782 (2005). In that case, an employee spent over half his time performing bargaining unit functions. Because the employee spent over half his time performing bargaining unit functions, the Board ruled the employee had

a substantial interest in the unit's wages, hours, and conditions of employment and the employee was included in the unit.

In *Avco Corp.*, the Board likewise included employees into a bargaining unit as dual-function employees when they did substantial amounts of bargaining unit work, but bargaining unit work less than 50% of their time. 308 NLRB 1045 (1992). The Board specifically stated “voter eligibility and unit placement do not turn only on maximizing homogeneity amount unit employees.” *Id.*

Here, there is no doubt that lube technicians perform bargaining unit work. Indeed, the DDE specifically states “[s]ervice technicians will do the more basic work that a lube technician does. . . .” DDE, Page 3. The Decision further states “the service technicians can be assigned by the foreman to handle the more standard lube work.” DDE, Page 3. The DDE stated without equivocation that lube technicians perform work that the service technician regularly performs.

The union may try to claim that these tasks do not constitute bargaining unit work or a bargaining unit function because they are supposedly “lesser” tasks, but that claim simply fails. Service technicians flag for all those tasks, which means they earn money for this work as lube technicians do. In addition, the Board has already ruled that in this situation, this constitutes bargaining unit work. The record leaves beyond dispute that lube technicians perform bargaining unit work more than 50% of the day and the dual-function doctrine requires the lube technicians’ inclusion in the bargaining unit. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990) (calling oil changes, filters changes, and other similar tasks mechanical work).

The analysis ceases after a party shows that a classification a petitioner seeks to exclude performs bargaining unit functions more than 25% to 30% of the time. *Oxford Chem., Inc.*, 286 NLRB at 188; *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997) (unnecessary to evaluate

other community-of-interest factors once employer shows that the employee performs unit work regularly). Here the lube technicians regularly share and perform work with service technicians sufficient to have a substantial interest in the unit's wages, hours, and conditions of employment. *In re Medlar Elec.*, 337 NLRB at 797. The Regional Director's complete failure to address the dual-function argument despite the record clearly establishing that lube technicians spend well over 25–30% of their time performing service technician job duties represents a clear error regarding a substantial factual issue.

B. An Appropriate Unit Must Include the Lube Technicians Otherwise the Region Will Create an Inappropriate Sub-Unit of “Technicians”

1. The law regarding appropriate units

The Board in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), held that when employees or a union seek representation of “unit of employees who are readily identifiable as a group (based on job classifications, departments, functions, work locations, skills, or similar factors) . . . the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that employees in the unit could be placed in a larger unit which would also be appropriate or even more appropriate” but only if it is first shown that they “share a community of interest after considering the traditional criteria.” *Id.* at 17; *Home Depot USA, Inc.*, 331 NLRB 1289 (2000) (traditional community of interest factors include the degree of functional integration, common supervision, the nature of the employee skills and functions, interchangeability and contact among other employees, work situs, and commonality of wages, hours and other terms and conditions of employment).

While the Union may petition for whichever employees it desires, it is important to remember the longstanding principle that “the Board cannot stop with the observation that the petitioner proposed the unit” and instead must determine if the proposed unit is appropriate.

Specialty Healthcare & Rehabilitation Center of Mobile, 357 NLRB No. 83, *9 (2011) (citing *Metropolitan Life Ins. Co.*, 380 U.S. 438, 442 (1965)). Further, although the Act does not require the unit be the “only appropriate unit” or the “most appropriate unit,” the Petitioner must at least seek “an appropriate unit.” *The Boeing Company*, 337 NLRB 152 (2001).

2. The law regarding “readily identifiable and “fractured” units

To avoid having the overwhelming community of interest standard run afoul of the statutory admonition that the extent of the petitioned-for unit cannot control, the petitioned-for unit must be readily identifiable on its face. *Specialty Healthcare*, 357 NLRB No. 83, *51, n. 25 (Board majority relying on *Blue Man Vegas, LLC v. NLRB*, 529 F.3d 417 (D.C. Cir. 2008) to support adoption of *Specialty Healthcare* standard). Importantly, the Board also held that not only must the unit be readily identifiable with the traditional community of interest, a petitioner’s unit is inappropriate if it is “fractured.”

The Board stated in *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999), that “it is well established that the Board does not approve fractured units, *i.e.*, combinations of employees that are too narrow in scope or that have no rational basis.” *Id.* (citing *Colorado National Bank of Denver*, 204 NLRB 243 (1973)). In *Seaboard Marine*, the Board held that the petitioned-for unit of employees was inappropriate because the employees “d[id] not share a sufficiently distinct community of interest from other employees to warrant a separate unit and, therefore, that the unit grouping sought by the Petitioner is an arbitrary one.” *Id.* (citing *Brand Precision Services*, 313 NLRB 657 (1994); *Transerv Systems*, 311 NLRB 766 (1993)).

Additionally, the Board has held that when an employer utilizes a highly integrated workflow process, a union’s attempt to extract a selective portion of the workforce while excluding others may lead to an inappropriate fractured unit. As the Board held in *TDK Ferrites*

Corp., 342 NLRB 1006, 1008 (2004), a union’s attempt to selectively petition for “maintenance department employees, production technicians, tool specialists, and set-up specialist” separate from the rest of the employer’s production employees in their “highly integrated” manufacturing operation, was inappropriate. *Id.* The Board held that, based on the high degree of interaction of petitioned-for employees with non-petitioned-for employees and other shared community of interest factors, the unit was not “composed of a distinct and homogeneous group of employees with interests separate and apart from other employees at the Employer’s plant” and, therefore, such a unit could not be justified. *Id.*

3. The directed unit of technicians creates a fractured unit

The directed unit in this matter is fractured and therefore inappropriate because the Regional Director ordered an overly narrow unit based on the service technicians’ skill and ability, all the while ignoring a plethora of other activities, interests and conditions of employment the service technicians have in common with other employees and thus an overwhelming community of interest. This narrow focus on the skill and ability factor alone violates established Board precedent and excludes employees who will be significantly impacted by the existence of a bargaining unit and thus who should otherwise have the privilege to vote for representation.

While the Regional Director claims that the directed unit has the readily identifiable trait such as the ability to repair vehicles, the Board instructed in *Specialty Healthcare* that the unit must not result in fracturing of the workplace. In *Specialty Healthcare*, the Board held that a unit is fractured if it is too narrow in scope or has no rational basis. And, in its attempt to defend against the “proliferation of units” argument *Specialty Healthcare* would generate (see Member Hayes’ dissent) and avoid *Seaboard Marine*, the Board defined “too narrow in scope” as meaning the same as “no rational basis.” *See also Odwalla, Inc.*, 357 NLRB 1608 (2011).

“Too narrow in scope,” however, is not necessarily coincident with “no rational basis,” meaning an otherwise “rational” grouping might still fracture a unit when the analysis used to obtain that unit too narrowly focuses on aspects of the employees in the petitioned-for unit – such as a focus on just one specific qualification or function to the exclusion of all others – as opposed to the unit’s size. This concept applies here. While the service technicians indeed perform some specific jobs, they happen to do so among all the other Service Drive employees, with the help of all the other employees, and with employees who have *all the community of interest factors overlapping*. To allow the Regional Director’s decision to survive means that a party merely has to establish a single common job trait and then the other community of interest factors simply do not matter. All one has to do is closely read the Regional Director’s analysis in Section II.B of the DDE, where all her analysis focuses on the skills and ability factor to the effective exclusion of all others to see that is exactly what the Regional Director did – define an overly narrow unit to the effective exclusion of all traditional community of interest factors except one. In essence, by paying lip service to *Specialty Healthcare* and then proceeding with a fractured unit, the Regional Director is ignoring the Act’s bedrock community of interest principle altogether. Surely, the Board never intended *Specialty Healthcare* to extend so far.

Indeed, the Board must evaluate the policy implications of allowing this reasoning to apply in the current case. The error in the Regional Director’s laser beam focus on one job function and qualification in a complex, highly integrated service operation comes to light when one considers how this analysis would proceed for other classifications at the Buena Park Facility. For example, the lube technicians have a specialized job function. The porters have a specialized job function. The shuttle drivers have a specialized job function. The parts drivers have a specialized job function. The counterpersons have a specialized job function. The

shipping and receiving personnel have a specialized job function. Under the analysis set forth in the DDE, the appropriate unit for each of these classifications would be separate bargaining units because each has an alleged unique primary function and job-specific training – notwithstanding the near perfect overlap in the remaining community of interest factors. The potential labor instability in a car dealership operation under such conditions would have no bounds.

Such a proliferation of fractured units is precisely the unworkable situation foreshadowed by the dissent in *Specialty Healthcare*, 357 NLRB No. 83 (2011). While critiquing the overwhelming-community-of-interest test, former Member Hayes argued that the analysis should not focus solely on the shared interest of the petitioned-for employees in a readily identifiable unit, but must also ask “whether the interests of the group sought are *sufficiently distinct* from those of the other employees to warrant the establishment of a separate unit” notwithstanding differences in job titles or roles. *Id.* at *84 (emphasis in original). To ignore such a concern “would represent an extraordinary fragmentation of the work force for collective-bargaining purposes, a situation that cannot lend itself to [] labor relations stability.” *Id.* at *86–87. As indicated above, this concern is particularly relevant in a complex car dealership operation like the Buena Park facility, where several different classifications work so closely together, share similar terms and conditions of employment but, by necessity, perform differing tasks.

As outlined above and discussed in more detail in the job-specific arguments to follow, the directed unit in this case suffers the same malady as those petitioned-for units found inappropriate by the Board under the fractured unit principle: where, as here, the Regional Director admits several of the job classifications do service technician job duties and directly support the service technicians, no rational basis exists to include just the narrow group of employees classified as service technicians at the Buena Park Facility in a unit to the exclusion

of the other employee classifications that work in the facility's service department in close proximity with service technicians. *See* Tr. 128–31, 130–31, 145–46, 149–50 (discussing examples of lube technicians assisting service technicians to complete assignments which the service technicians “flagged”).

Given the broad duties of many of the employees sought by the Union as well as those designated by the Regional Director, the fact that many employees who are outside the directed unit frequently perform the same work, in the same location, alongside the directed unit employees with the same supervisors, and with all other benefits and conditions of employment being exactly the same, it would be absolutely inappropriate to draw a fractured boundary around the designated employees to the exclusion of the remaining employees. Moreover, the fracture created by the Regional Director's boundary cuts across the entire Service Drive. As a result, the directed unit is fractured and thus inappropriate. Instead, the Board must order at least one of the Employer's requested units. Finally, *even if the Board were to apply* the “overwhelming community of interest” standard, all the disputed job classifications should be included in the only appropriate unit, or, at the very least, the lube technicians.

4. The proper unit should include at least one of the following units

a. The highly-integrated nature of the service drive necessitates the inclusion of all the requested employees

The Board has held on multiple occasions that a petitioned-for unit is inappropriate where it is interrelated in large degree with another unit. *See, e.g., United Rentals*, 341 NLRB No. 72 (2004) (“We find . . . that the overwhelming and undisputed evidence of overlapping duties and interchange between the excluded employees and the petitioned-for employees, and of their common terms and conditions of employment, demonstrates that the petitioned-for unit is not an appropriate unit”); *Jerry's Chevrolet, Cadillac*, 344 NLRB 689, 693 (2005) (Board found that

the only appropriate unit included employees in *four different car dealerships*. The Board reached this conclusion based on: (1) geographic proximity; (2) highly integrated and administratively centralized nature of the facilities; (3) functional integration of the employer's operations; and, (4) similar wages and benefits); *Publix Super Markets, Inc.*, 343 NLRB No. 109 (2004) (relying on the functional integration between the proposed units to find they were required to be combined to constitute an appropriate unit).

Here, the highly integrated nature of the Service Drive employees proves they share a community-of-interest. As discussed above, the Service Drive employees are treated nearly identically regardless of their role at the facility regarding a vast majority of the listed factors, including, but not limited to:

1. Functional integration of the jobs in order to achieve one goal—satisfy every Service Drive customer;
2. All Buena Park Service Drive employees receive the same benefits;
3. The policies, handbook, and work rules are the same for all Service Drive employees;
4. The hours of work are substantially the same, with the only differences arising from the need to offer services to Buena Park's customers;
5. Working conditions are essentially the same amongst the disputed job classifications and the petitioned-for employees. The same handbook and policies apply to all employees in question;
6. Supervision is the same;
7. As demonstrated by the Repair Order example, job duties are closely intertwined—all Service Drive employees work closely together to ensure customer satisfaction;
8. There is substantial overlap between the classifications;
9. The Service Drive employees are constantly communicating and interacting to identify customer needs and offering additional services.

Taking each factor in the aggregate, it follows that the community-of-interest factors is established. All the employees must be part of any appropriate unit.

b. The proper unit should include lube technicians, service advisors, counterpersons, and shipping & receiving

If the Regional Director rejects the complete Service & Parts unit, the appropriate unit should then include service technicians, lube technicians, service advisors, counterpersons, and shipping & receiving. As set forth in Employer's June 28, 2016 Statement of Position, attachment C2, the Board should include them because they share a community-of-interest with the petitioned-for unit. Bd. Ex. 1(d). Buena Park Honda treats these employees nearly identically regardless of their role at the facility regarding a vast majority of the listed factors, including, but not limited to, functional integration of the jobs to assist customers, daily interaction between job classifications, common policies, procedures, benefits, and common supervision.

c. The proper unit should include lube technicians, counterpersons, and shipping & receiving

If the Regional Director rejects the units described above in Sections B.4.a., and B.4.b., then the appropriate unit should include service technicians, lube technicians, counterpersons, and shipping & receiving. As set forth in Employer's June 28, 2016 Statement of Position, attachment C3, the Board should include the employees because they share a community-of-interest with the petitioned-for unit. Bd. Ex. 1(d). Succinctly, Buena Park Honda treats these employees nearly identically regardless of their role at the facility regarding a vast majority of the listed factors, including, but not limited to, functional integration of the jobs in order to assist Service Drive customers, daily interaction between job classifications, common policies, procedures, benefits, and common supervision.

d. The proper unit should include lube technicians and service advisors

If the Regional Director rejects the units described above, the unit should then include service technicians, lube technicians, and service advisors. As set forth in Employer's June 28, 2016 Statement of Position, attachment C4, Buena Park treats employees nearly identically regardless of their role at the facility regarding a vast majority of the listed factors, including, but not limited to, functional integration of the jobs to ensure customer satisfaction, daily interaction between job classifications, common policies, procedures, benefits, and common supervision. Tr. 144, 311; Bd. Ex. B1(d). Besides the interaction described between the service technicians and the lube technicians, service advisors participate in analyzing and diagnosing vehicle issues to ensure customers receive the best service. Tr. 138.

e. The highly-integrated nature of the service drive demonstrates that at least lube technicians and service technicians must be included in the same unit

i. Applicable Board Law Including *Specialty Healthcare* Instructs That The Appropriate Unit, At A Minimum, Includes Lube Technicians and Service Technicians

The Regional Director made clear errors on substantial factual issues that prejudice Buena Park. The Board has consistently recognized that, at a bare minimum, lube technicians and service technicians must be included in the same unit. *Jerry's Chevrolet, Cadillac*, 344 NLRB at 693 (appropriate unit included all service technicians, apprentices, and lube rack technicians employed at *four separate* dealership locations).

The Board's recognition that the lube technician position and service technician position are interrelated can be found even where a proposed bargaining unit was not at issue. In a case involving an auto dealership, the Board specifically rejected an employer's argument that it did not violate Section 8(a)(5) by eliminating the lube technician position because it was not a

bargaining unit position. *Re Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB 633, 639–40 (2011). The facts demonstrated that lube technicians worked alongside other service technicians in the bargaining unit, and that the work that lube technician performed – oil changes, tire rotations, and brake inspections – was also performed by service technicians. *Id.*; *see also Desert Toyota*, 346 NLRB 132, 139 (2005) (appropriate unit in failure to bargain case included: all full-time and regular part-time service technicians, including service technicians, used car technicians, accessory installers, and lube technicians); *Hartzheim Dodge, Inc.*, 354 NLRB No. 22 (2009) (same); *Stevens Pontiac-GMC, Inc.*, 295 NLRB 599 n.5 (1989) (appropriate unit comprised all full time and regular part-time lubricators, car washers, polishers, tire servicemen, combination tow car men and miscellaneous men employed by the automotive dealer).

All of the supporting cases above confirm that the smallest unit must include service technicians and lube technicians. Like *Re Stevens Creek Chrysler Jeep Dodge, Inc.*, 357 NLRB at 639–40, the current facts demonstrate that lube technicians work alongside service technicians in the petitioned-for unit performing similar duties (i.e., oil changes, tire rotations, and brake inspections). *Id.*; Tr. 128–31, 130–31, 145–46, 149–50. Consequently, where lube technicians and service technicians work as closely as they do here, the Board must include them in the same unit. *See* Tr. 128–31, 130–31, 145–46, 149–50.

The Union pointed to cases to argue that the Region should exclude lube technicians. *Dodge City of Wauwatosa, Inc. v. NLRB*, 282 NLRB 459 (1986); *Overnite Transportation Co.*, 322 NLRB 723 (1996); *NLRB v. Contemporary Cars, Inc.*, 667 F.3d 1364 (11th Cir. 2012). Each of those cases, however, does not apply and must be distinguished.

In *Dodge City of Wauwatosa, Inc.*, the Board found no community of interest where mechanics had only “limited and casual” contact with other employees, *inter alia*. 282 NLRB at

459–60. Here, the interaction between the service technicians and the lube technicians is undisputed. Tr. 128–31, 130–31, 145–46, 149–50, 465. First and foremost, during the hearing, Buena Park’s service technician Kevin Colon repeatedly admitted that service technicians use lube technicians to increase their compensation. Tr. 130–31. Service technicians flag the hours that the lube technicians perform. Tr. 104:21–24. They often work side-by-side to complete tasks and the service technicians receive compensation based on work that lube technicians finish. Tr. 465. Each classification works the same hours, receives the same benefits, and has the same supervisor. As explained at the hearing and throughout this brief, here the service technicians and lube technicians work together. Tr. 465. Buena Park’s service technicians *profit* from the efficiency achieved by having lube technicians assist with work they “flag.” Tr. 128–31, 130–31, 145–46, 149–50.

While the union may parade authority that it claims shows the contrary, that authority either does not apply or supports the Employer’s position that the Region should include the lube technicians in the bargaining unit. For example, *Dodge City*, 282 NLRB 459, does not address only adding lube technicians. Rather, *Dodge City* addressed expansion of a whole wall-to-wall unit of the service department. Here, Buena Park Honda argues at least the Region should add lube technicians, which is consistent with *Dodge City* because “in *Dodge City* the Board included lube and oil work employees in the craft unit.” *Fletcher Jones*, 300 NLRB at 876. The union offers no authority to the contrary. *Overnite Transportation*, 322 NLRB 723, does not apply as it addressed mechanics in a unit with drivers and dock workers. Again, this does not address the issue of simply including lube technicians into a bargaining unit of service technicians where they work side-by-side. The union further cites *Contemporary Cars*, to support its petitioned-for unit. 667 F.3d 1364. This case supports Buena Park Honda’s position.

In *Contemporary Cars* the NLRB approved a unit of general technicians and alignment/tire/wheel specialists. The general technicians and alignment/tire/wheel specialists perform the same tasks that the current service technicians and lube technicians perform. *Id.* at 1371. Just as those voting groups were included in that case, so too should the Board direct an election that at least includes service technicians. The Union cited *Country Ford Trucks, Inc.*, 330 NLRB 328 (1999) and *Country Ford Trucks v. National Labor Relations Board*, 229 F.3d 1184 (D.C. Circuit (2000)). These two cases were decided on the same set of facts. Both of these cases ruled that a unit that consisted of “service technicians and lubricators” – which is a unit Buena Park Honda seeks – is the appropriate unit. The Region should do as *Country Ford Trucks, Inc.* says and order an election with the service technicians and lube technicians. For the foregoing reasons, the Region must include at least the lube technicians in the bargaining unit.

ii. Service technicians and lube technicians have significant wage overlap

Significant overlap exists regarding the wages of service technicians and the lube technicians because service technicians “flag” work that lube technicians regularly complete. Tr. 472. As previously illustrated, the service technicians can – and in fact do – increase their compensation based on work lube technicians complete. Tr. 72, 191. Other than wages, however, the service technicians and other Service Drive employees have the same benefits, supervision, working conditions, schedules, and keep track of their time in the same manner. *See e.g., Wal-Mart Stores, Inc.*, 328 NLRB 904, 904 (1999) (noting that no one factor is considered determinative).

This represents a vital factor in the analysis. Should the Union win the election, the Employer would have an 8(a)(5) duty to bargain. That duty to bargain would directly implicate the lube technicians. Buena Park Honda would be forever barred from making changes to lube

technician compensation and expectations regarding “flag” hours without first bargaining with the Union. This would be true because any change to this system would take money away from what would be bargaining unit members and at least have non-bargaining unit members take credit for it. Furthermore, this sort of change would not be something unknown either that happened after certification. This would be a problem the parties and the Region knew existed and could have corrected by including both lube technicians and service technicians in the unit. Here, where the parties know that there is this issue that significantly affects job classifications, the Board cannot separate the two groups of employees.

**iii. Other factors prove there is community-of-interest
between service technicians and lube technicians**

Perhaps no position exemplifies the team concept underlying the Service Drive more than service technicians and lube technicians. Tr. 570. Both groups are treated nearly identically regardless of their role at the facility regarding a vast majority of the listed factors, including, but not limited to, functional integration of the jobs to complete tasks, including daily interaction between job classifications, common policies, procedures, benefits, and common supervision. They even wear the same uniform. Tr. 154; DDE, Page 9.

And, while the Union will argue that the service technicians work in different locations, that argument fails. The record leaves beyond dispute that the bays for express service are a short distance away from the bays that service technicians use. Tr. 65. Kevin Colon admitted lube technicians work in the bays of service technicians. In addition, the record leaves no doubt that although the Union argues that the service technicians use different tools, the lube technicians work in the service technicians’ bays and use their, too.

Service technicians also train lube technicians. Specifically, lube technicians will work with service technicians to learn new tasks and progress to perform different duties. Tr. 136:7–17, 465.

C. The Regional Director Erred in Applying the Board’s Factors for Determining Craft Status

Board precedent draws a bright line distinction between “skilled” or “craft” employees and lesser-skilled individuals. The Board defines a craft unit as follows:

One consisting of a distinct and homogenous group of skilled journeymen and craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skill, and specialized tools and equipment.

Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994). In determining whether a petitioned-for craft unit is appropriate, the Board considers:

1. Whether the employees undergo formal training or participate in an apprenticeship program;
2. Whether the work is functionally integrated with the work of the employees whom the petitioner seeks to exclude from the unit;
3. Whether the job duties of the petitioned-for employees overlap with the duties of the excluded employees;
4. Whether the employer assigns work according to need rather than based on craft or jurisdictional lines; and
5. Whether the petitioned-for employees share common interests with other employees.

Id. The Regional Director erred in applying the above-factors to the evidence in the record.

1. Formal training or participation in apprenticeship program

The Regional Director erred in finding that the lube technicians are not “apprentices” or “helpers” of service technicians. In *Fletcher Jones*, 300 NLRB at 876, the Board found that quick service lube technicians who performed oil and filter changes and simple mechanical

repair work were appropriately included in a craft unit of maintenance technicians where the employer provided training and classes for the technicians to maintain and update their skills, and the employer considered the main shop as “the training ground where employees learn skilled mechanical work by ‘interfacing’ with the skilled technicians.” Similarly, in *Dodge City*, 289 NLRB at 459, the Board found that including a service technician “trainee” in a unit of skilled service mechanics did not destroy the craft unit.

The lube technicians in this case undisputedly have frequent interaction with the service technicians. Tr. 136. Testimony also demonstrates that the lube technician position can lead to service technician position. DDE, Page. 5. Lube technicians also observe service technicians. Tr. 136:7–15. The record is also clear that lube technicians have progressed from lube technicians to become service technicians. DDE, Page 5. Accordingly, the Regional Director erred in concluding that the first factor weighed in favor of excluding the lube technicians from the petitioned-for unit.

2. Substantial functional integration between the work of excluded and included employees

With respect to the second factor, the Regional Director ignored substantial evidence demonstrating that the work of the petitioned-for and excluded employees at Buena Park is functionally integrated. Tr. 570. After all, Buena Park follows a team concept. Tr. 570. In addition to the examples discussed above, the record makes clear that service technicians recommend services that lube technicians regularly perform. Tr. 128–31, 130–31, 145–46, 149–50. The unit is further functionally integrated because service technicians have lube technicians perform different tasks that the service technicians flag. Tr. 128–31, 130–31, 145–46, 149–50. Within this structure, the work of service technicians and lube technicians is highly integrated. Lube technicians are directly involved in the acts of repair and maintenance, collaborating with

service technicians on a regular basis. Accordingly, the Regional Director erred in concluding that the second factor weighed in favor of finding an appropriate craft unit.

3. Overlapping job duties

The Regional Director ignored evidence of overlapping job duties between the included and excluded employees. The record reflects that all Buena Park Service Employees check the ROs. Tr. 570. The record further reflects that all service technicians, service advisors, lube technicians, and parts associates play a role in the process of analysis, diagnosis and repair through Buena Park's computer system. Tr. 570. Further, no dispute exists that the service technicians and lube technicians have overlapping duties. Tr. 100:8–21. Both sets of employees perform oil changes, filter changes, tire rotations, tire balancing, battery service, and other tasks too. Tr. 100:8–21.

4. Whether the employer assigns work according to need rather than based on craft or jurisdictional lines

The record leaves no doubt that lube technicians regularly perform bargaining unit functions. Tr. 100. Indeed, Petitioner's Exhibit 2 demonstrates that part of the core training the service technicians receive overlaps with lube technician duties. P. Ex. 2. The records reflects that service technicians perform oil changes, tire rotations, tire repairs and other similar duties when assigned. Tr. 100.

5. Common interests

The Regional Director erred in concluding that the included and excluded employees do not share sufficient common interests to warrant their inclusion in a single non-craft unit. The record makes clear that the excluded employees share numerous terms and conditions of employment with their petitioned-for counterparts, therefore rendering the alleged "craft" unit inappropriate.

Undisputed examples include:

- All Service Drive employees have the same employee handbook and work under the same disciplinary rules.
- Same application process.
- Same orientation upon hire.
- All Service Park employees use the same system to keep track of their time.
- Same locker room and break room.
- Same pay dates.
- Same benefits and have the same opportunity to enroll for 401(k) benefits.
- Same holidays and paid time off eligibility.
- Same payroll through the same coordinator.

In conclusion, the Regional Director erred in concluding that this factor weighed in favor of finding an appropriate craft unit. In sum, an analysis of the craft unit shows the Board must include lube technicians with the service technicians.

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VI. CONCLUSION

For the foregoing reasons, the Board should grant the Employer's request for review of this matter.

Dated this 29th day of July, 2016.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-ONE

_____)	
BUENA PARK HONDA.,)	
)	
Employer,)	
)	
and)	Case No. 21-RC-178527
)	
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE)	
WORKERS, LODGE NO. 1484)	
)	
Petitioner.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that I have this day served by electronic filing the foregoing Buena Park Honda's Request for Review of the Regional Director's Decision and Order in Case No. 21-RC-178527 on the parties of record:

This the 29th day of July 2016.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/ Daniel A. Adlong
Daniel A. Adlong

Counsel for Buena Park Honda

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